

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY MAY 12, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1973

Introduced by Assembly Member Swanson

February 17, 2010

An act to ~~add and repeal~~ *repeal and amend* Sections ~~17053.76 and 23622.9~~ 17053.80 and 23623 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1973, as amended, Swanson. Income taxes: credits: qualified ~~employees: employees: hires.~~

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a ~~hiring credit for qualified taxpayers who hire qualified employees, as defined, subject to specified criteria~~ *credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each full-time employee hired by a qualified employer. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.*

This bill would, ~~for taxable years beginning on or after January 1, 2010, and before January 1, 2016, authorize a hiring credit under those respective laws for taxpayers who hire qualified employees, as defined under both laws, for taxable years beginning on or after January 1, 2011, expand the definition of “qualified employer” to mean a taxpayer that employed 30 or fewer employees as of the last day of the preceding~~

taxable year. This bill would also, for taxable years beginning on or after January 1, 2011, authorize a credit in the amount of \$5,000 for each full-time employee who is an ex-offender, as specified.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17053.80 of the Revenue and Taxation
2 Code, as added by Section 3 of Chapter 10 of the Third
3 Extraordinary Session of the Statutes of 2009, is repealed.

4 ~~17053.80.— (a) For each taxable year beginning on or after~~
5 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
6 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
7 ~~for each net increase in qualified full-time employees, as specified~~
8 ~~in subdivision (c), hired during the taxable year by a qualified~~
9 ~~employer.~~

10 ~~(b) For purposes of this section:~~

11 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
12 ~~to divorce, or any other transfer, whether or not for consideration.~~

13 ~~(2) “Qualified full-time employee” means:~~

14 ~~(A) A qualified employee who was paid qualified wages by the~~
15 ~~qualified employer for services of not less than an average of 35~~
16 ~~hours per week.~~

17 ~~(B) A qualified employee who was a salaried employee and~~
18 ~~was paid compensation during the taxable year for full-time~~
19 ~~employment, within the meaning of Section 515 of the Labor Code,~~
20 ~~by the qualified employer.~~

21 ~~(3) A “qualified employee” shall not include any of the~~
22 ~~following:~~

23 ~~(A) An employee certified as a qualified employee in an~~
24 ~~enterprise zone designated in accordance with Chapter 12.8~~
25 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
26 ~~Government Code.~~

27 ~~(B) An employee certified as a qualified disadvantaged~~
28 ~~individual in a manufacturing enhancement area designated in~~
29 ~~accordance with Section 7073.8 of the Government Code.~~

1 ~~(C) An employee certified as a qualified employee in a targeted~~
2 ~~tax area designated in accordance with Section 7097 of the~~
3 ~~Government Code.~~

4 ~~(D) An employee certified as a qualified disadvantaged~~
5 ~~individual or a qualified displaced employee in a local agency~~
6 ~~military base recovery area (LAMBRA) designated in accordance~~
7 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
8 ~~7 of Title 1 of the Government Code.~~

9 ~~(E) An employee whose wages are included in calculating any~~
10 ~~other credit allowed under this part.~~

11 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
12 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
13 ~~employees.~~

14 ~~(5) “Qualified wages” means wages subject to Division 6~~
15 ~~(commencing with Section 13000) of the Unemployment Insurance~~
16 ~~Code.~~

17 ~~(6) “Annual full-time equivalent” means either of the following:~~

18 ~~(A) In the case of a full-time employee paid hourly qualified~~
19 ~~wages, “annual full-time equivalent” means the total number of~~
20 ~~hours worked for the taxpayer by the employee (not to exceed~~
21 ~~2,000 hours per employee) divided by 2,000.~~

22 ~~(B) In the case of a salaried full-time employee, “annual~~
23 ~~full-time equivalent” means the total number of weeks worked for~~
24 ~~the taxpayer by the employee divided by 52.~~

25 ~~(c) The net increase in qualified full-time employees of a~~
26 ~~qualified employer shall be determined as provided by this~~
27 ~~subdivision:~~

28 ~~(1) (A) The net increase in qualified full-time employees shall~~
29 ~~be determined on an annual full-time equivalent basis by~~
30 ~~subtracting from the amount determined in subparagraph (C) the~~
31 ~~amount determined in subparagraph (B).~~

32 ~~(B) The total number of qualified full-time employees employed~~
33 ~~in the preceding taxable year by the taxpayer and by any trade or~~
34 ~~business acquired by the taxpayer during the current taxable year.~~

35 ~~(C) The total number of full-time employees employed in the~~
36 ~~current taxable year by the taxpayer and by any trade or business~~
37 ~~acquired during the current taxable year.~~

38 ~~(2) For taxpayers who first commence doing business in this~~
39 ~~state during the taxable year, the number of full-time employees~~
40 ~~for the immediately preceding prior taxable year shall be zero.~~

~~(d) In the case where the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the following year, and succeeding seven years if necessary, until the credit is exhausted.~~

~~(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.~~

~~(f) For purposes of this section:~~

~~(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.~~

~~(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.~~

~~(g) (1) (A) Credit under this section and Section 23623 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.~~

~~(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 that cumulatively total four hundred million dollars (\$400,000,000) for all taxable years.~~

~~(2) The date a return is received shall be determined by the Franchise Tax Board.~~

~~(3) (A) The determinations of the Franchise Tax Board with respect to the cut-off date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding~~

~~(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.~~

~~(4) The Franchise Tax Board shall periodically provide notice on its Web site with respect to the amount of credit under this~~

1 ~~section and Section 23623 claimed on timely filed original returns~~
2 ~~received by the Franchise Tax Board.~~

3 ~~(h) (1) The Franchise Tax Board may prescribe rules, guidelines~~
4 ~~or procedures necessary or appropriate to carry out the purposes~~
5 ~~of this section, including any guidelines regarding the limitation~~
6 ~~on total credits allowable under this section and Section 23623~~
7 ~~and guidelines necessary to avoid the application of paragraph (2)~~
8 ~~of subdivision (f) through split-ups, shell corporations, partnerships,~~
9 ~~tiered ownership structures, or otherwise.~~

10 ~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
11 ~~Division 3 of Title 2 of the Government Code does not apply to~~
12 ~~any standard, criterion, procedure, determination, rule, notice, or~~
13 ~~guideline established or issued by the Franchise Tax Board~~
14 ~~pursuant to this section.~~

15 ~~(i) This section shall remain in effect only until December 1 of~~
16 ~~the calendar year after the year of the cut-off date, and as of that~~
17 ~~December 1 is repealed.~~

18 *SEC. 2. Section 17053.80 of the Revenue and Taxation Code,*
19 *as added by Section 3 of Chapter 17 of the Third Extraordinary*
20 *Session of the Statutes of 2009, is amended to read:*

21 *17053.80. (a) For (1) Except as provided in paragraph (2),*
22 *for each taxable year beginning on or after January 1, 2009, there*
23 *shall be allowed as a credit against the “net tax,” as defined in*
24 *Section 17039, three thousand dollars (\$3,000) for each net increase*
25 *in qualified full-time employees, as specified in subdivision (c),*
26 *hired during the taxable year by a qualified employer.*

27 *(2) (A) For each taxable year beginning on or after January*
28 *1, 2011, there shall be allowed as a credit against the “net tax,”*
29 *as defined in Section 17039, five thousand dollars (\$5,000) for*
30 *each net increase in qualified full-time employees, as specified in*
31 *subdivision (c), hired during the taxable year by a qualified*
32 *employer.*

33 *(B) For purposes of this paragraph, a “qualified full-time*
34 *employee” means an individual who meets the criteria of*
35 *paragraph (2) of subdivision (b) and who is an ex-offender who*
36 *was convicted of a felony. A “qualified full-time employee” shall*
37 *not include a sex offender pursuant to Section 290 of the Penal*
38 *Code, or the equivalent in another state or territory, under military*
39 *law, or under federal law, or a person convicted of a serious or*

1 *violent felony, as defined in subdivision (c) of Section 667.5 and*
2 *subdivision (c) of Section 1192.7 of the Penal Code.*

3 (b) For purposes of this section:

4 (1) “Acquired” includes any gift, inheritance, transfer incident
5 to divorce, or any other transfer, whether or not for consideration.

6 (2) “Qualified full-time employee” means:

7 (A) A qualified employee who was paid qualified wages by the
8 qualified employer for services of not less than an average of 35
9 hours per week.

10 (B) A qualified employee who was a salaried employee and
11 was paid compensation during the taxable year for full-time
12 employment, within the meaning of Section 515 of the Labor Code,
13 by the qualified employer.

14 (3) A “qualified employee” shall not include any of the
15 following:

16 (A) An employee certified as a qualified employee in an
17 enterprise zone designated in accordance with Chapter 12.8
18 (commencing with Section 7070) of Division 7 of Title 1 of the
19 Government Code.

20 (B) An employee certified as a qualified disadvantaged
21 individual in a manufacturing enhancement area designated in
22 accordance with Section 7073.8 of the Government Code.

23 (C) An employee certified as a qualified employee in a targeted
24 tax area designated in accordance with Section 7097 of the
25 Government Code.

26 (D) An employee certified as a qualified disadvantaged
27 individual or a qualified displaced employee in a local agency
28 military base recovery area (LAMBRA) designated in accordance
29 with Chapter 12.97 (commencing with Section 7105) of Division
30 7 of Title 1 of the Government Code.

31 (E) An employee whose wages are included in calculating any
32 other credit allowed under this part.

33 (4) ~~“Qualified”~~ (A) *For taxable years beginning on or after*
34 *January 1, 2009, and before January 1, 2011, “qualified employer”*
35 *means a taxpayer that, as of the last day of the preceding taxable*
36 *year, employed a total of 20 or fewer employees.*

37 (B) *For taxable years beginning on or after January 1, 2011,*
38 *“qualified employer” means a taxpayer that, as of the last day of*
39 *the preceding taxable year, employed a total of 30 or fewer*
40 *employees.*

1 (5) “Qualified wages” means wages subject to Division 6
2 (commencing with Section 13000) of the Unemployment Insurance
3 Code.

4 (6) “Annual full-time equivalent” means either of the following:

5 (A) In the case of a full-time employee paid hourly qualified
6 wages, “annual full-time equivalent” means the total number of
7 hours worked for the taxpayer by the employee (not to exceed
8 2,000 hours per employee) divided by 2,000.

9 (B) In the case of a salaried full-time employee, “annual
10 full-time equivalent” means the total number of weeks worked for
11 the taxpayer by the employee divided by 52.

12 (c) The net increase in qualified full-time employees of a
13 qualified employer shall be determined as provided by this
14 subdivision:

15 (1) (A) The net increase in qualified full-time employees shall
16 be determined on an annual full-time equivalent basis by
17 subtracting from the amount determined in subparagraph (C) the
18 amount determined in subparagraph (B).

19 (B) The total number of qualified full-time employees employed
20 in the preceding taxable year by the taxpayer and by any trade or
21 business acquired by the taxpayer during the ~~current~~ *preceding*
22 taxable year.

23 (C) The total number of full-time employees employed in the
24 current taxable year by the taxpayer and by any trade or business
25 acquired during the current taxable year.

26 (2) For taxpayers who first commence doing business in this
27 state during the taxable year, the number of full-time employees
28 for the immediately preceding prior taxable year shall be zero.

29 (d) In the case where the credit allowed by this section exceeds
30 the “net tax,” the excess may be carried over to reduce the “net
31 tax” in the following year, and *the* succeeding seven years if
32 necessary, until the credit is exhausted.

33 (e) Any deduction otherwise allowed under this part for qualified
34 wages shall not be reduced by the amount of the credit allowed
35 under this section.

36 (f) For purposes of this section:

37 (1) All employees of the trades or businesses that are treated as
38 related under either Section 267, 318, or 707 of the Internal
39 Revenue Code shall be treated as employed by a single taxpayer.

(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.

(g) (1) (A) Credit under this section and Section 23623 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.

(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 that cumulatively total four hundred million dollars (\$400,000,000) for all taxable years.

(2) The date a return is received shall be determined by the Franchise Tax Board.

(3) (A) The determinations of the Franchise Tax Board with respect to the cut-off date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.

(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

(4) The Franchise Tax Board shall periodically provide notice on its Web site with respect to the amount of credit under this section and Section 23623 claimed on timely filed original returns received by the Franchise Tax Board.

(h) (1) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 23623 and guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through split-ups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to

1 any standard, criterion, procedure, determination, rule, notice, or
2 guideline established or issued by the Franchise Tax Board
3 pursuant to this section.

4 (i) This section shall remain in effect only until December 1 of
5 the calendar year after the year of the cut-off date, and as of that
6 December 1 is repealed.

7 *SEC. 3. Section 23623 of the Revenue and Taxation Code, as*
8 *added by Section 8 of Chapter 10 of the Third Extraordinary*
9 *Session of the Statutes of 2009, is repealed.*

10 ~~23623. (a) For each taxable year beginning on or after January~~
11 ~~1, 2009, there shall be allowed as a credit against the "tax," as~~
12 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~
13 ~~net increase in qualified full-time employees, as specified in~~
14 ~~subdivision (c), hired during the taxable year by a qualified~~
15 ~~employer.~~

16 ~~(b) For purposes of this section:~~

17 ~~(1) "Acquired" includes any gift, inheritance, transfer incident~~
18 ~~to divorce, or any other transfer, whether or not for consideration.~~

19 ~~(2) "Qualified full-time employee" means:~~

20 ~~(A) A qualified employee who was paid qualified wages during~~
21 ~~the taxable year by the qualified employer for services of not less~~
22 ~~than an average of 35 hours per week.~~

23 ~~(B) A qualified employee who was a salaried employee and~~
24 ~~was paid compensation during the taxable year for full-time~~
25 ~~employment, within the meaning of Section 515 of the Labor Code,~~
26 ~~by the qualified employer.~~

27 ~~(3) A "qualified employee" shall not include any of the~~
28 ~~following:~~

29 ~~(A) An employee certified as a qualified employee in an~~
30 ~~enterprise zone designated in accordance with Chapter 12.8~~
31 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
32 ~~Government Code.~~

33 ~~(B) An employee certified as a qualified disadvantaged~~
34 ~~individual in a manufacturing enhancement area designated in~~
35 ~~accordance with Section 7073.8 of the Government Code.~~

36 ~~(C) An employee certified as a qualified employee in a targeted~~
37 ~~tax area designated in accordance with Section 7097 of the~~
38 ~~Government Code.~~

39 ~~(D) An employee certified as a qualified disadvantaged~~
40 ~~individual or a qualified displaced employee in a local agency~~

1 military base recovery area (LAMBRA) designated in accordance
2 with Chapter 12.97 (commencing with Section 7105) of Division
3 7 of Title 1 of the Government Code.

4 (E) An employee whose wages are included in calculating any
5 other credit allowed under this part.

6 (4) “Qualified employer” means a taxpayer that, as of the last
7 day of the preceding taxable year, employed a total of 20 or fewer
8 employees.

9 (5) “Qualified wages” means wages subject to Division 6
10 (commencing with Section 13000) of the Unemployment Insurance
11 Code.

12 (6) “Annual full-time equivalent” means either of the following:

13 (A) In the case of a full-time employee paid hourly qualified
14 wages, “annual full-time equivalent” means the total number of
15 hours worked for the taxpayer by the employee (not to exceed
16 2,000 hours per employee) divided by 2,000.

17 (B) In the case of a salaried full-time employee, “annual
18 full-time equivalent” means the total number of weeks worked for
19 the taxpayer by the employee divided by 52.

20 (c) The net increase in qualified full-time employees of a
21 qualified employer shall be determined as provided by this
22 subdivision:

23 (1) (A) The net increase in qualified full-time employees shall
24 be determined on an annual full-time equivalent basis by
25 subtracting from the amount determined in subparagraph (C) the
26 amount determined in subparagraph (B):

27 (B) The total number of qualified full-time employees employed
28 in the preceding taxable year by the taxpayer and by any trade or
29 business acquired by the taxpayer during the current taxable year.

30 (C) The total number of full-time employees employed in the
31 current taxable year by the taxpayer and by any trade or business
32 acquired during the current taxable year.

33 (2) For taxpayers who first commence doing business in this
34 state during the taxable year, the number of full-time employees
35 for the immediately preceding prior taxable year shall be zero.

36 (d) In the case where the credit allowed by this section exceeds
37 the “tax,” the excess may be carried over to reduce the “tax” in
38 the following year, and succeeding seven years if necessary, until
39 the credit is exhausted.

1 ~~(e) Any deduction otherwise allowed under this part for qualified~~
2 ~~wages shall not be reduced by the amount of the credit allowed~~
3 ~~under this section.~~

4 ~~(f) For purposes of this section:~~

5 ~~(1) All employees of the trades or businesses that are treated as~~
6 ~~related under either Section 267, 318, or 707 of the Internal~~
7 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

8 ~~(2) In determining whether the taxpayer has first commenced~~
9 ~~doing business in this state during the taxable year, the provisions~~
10 ~~of subdivision (f) of Section 17276, without application of~~
11 ~~paragraph (7) of that subdivision, shall apply.~~

12 ~~(g) (1) (A) Credit under this section and Section 17053.80 shall~~
13 ~~be allowed only for credits claimed on timely filed original returns~~
14 ~~received by the Franchise Tax Board on or before the cut-off date~~
15 ~~established by the Franchise Tax Board.~~

16 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~
17 ~~last day of the calendar quarter within which the Franchise Tax~~
18 ~~Board estimates it will have received timely filed original returns~~
19 ~~claiming credits under this section and Section 17053.80 that~~
20 ~~cumulatively total four hundred million dollars (\$400,000,000)~~
21 ~~for all taxable years.~~

22 ~~(2) The date a return is received shall be determined by the~~
23 ~~Franchise Tax Board.~~

24 ~~(3) (A) The determinations of the Franchise Tax Board with~~
25 ~~respect to the cut-off date, the date a return is received, and whether~~
26 ~~a return has been timely filed for purposes of this subdivision may~~
27 ~~not be reviewed in any administrative or judicial proceeding.~~

28 ~~(B) Any disallowance of a credit claimed due to a determination~~
29 ~~under this subdivision, including the application of the limitation~~
30 ~~specified in paragraph (1), shall be treated as a mathematical error~~
31 ~~appearing on the return. Any amount of tax resulting from such~~
32 ~~disallowance may be assessed by the Franchise Tax Board in the~~
33 ~~same manner as provided by Section 19051.~~

34 ~~(4) The Franchise Tax Board shall periodically provide notice~~
35 ~~on its Web site with respect to the amount of credit under this~~
36 ~~section and Section 17053.80 claimed on timely filed original~~
37 ~~returns received by the Franchise Tax Board.~~

38 ~~(h) (1) The Franchise Tax Board may prescribe rules, guidelines~~
39 ~~or procedures necessary or appropriate to carry out the purposes~~
40 ~~of this section, including any guidelines regarding the limitation~~

1 on total credits allowable under this section and Section 17053.80
2 and guidelines necessary to avoid the application of paragraph (2)
3 of subdivision (f) through split-ups, shell corporations, partnerships,
4 tiered ownership structures, or otherwise.

5 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
6 Division 3 of Title 2 of the Government Code does not apply to
7 any standard, criterion, procedure, determination, rule, notice, or
8 guideline established or issued by the Franchise Tax Board
9 pursuant to this section.

10 (i) This section shall remain in effect only until December 1 of
11 the calendar year after the year of the cut-off date, and as of that
12 December 1 is repealed.

13 *SEC. 4. Section 23623 of the Revenue and Taxation Code, as*
14 *added by Section 8 of Chapter 17 of the Third Extraordinary*
15 *Session of the Statutes of 2009, is amended to read:*

16 23623. (a) ~~For (1)~~ Except as provided in paragraph (2), for
17 each taxable year beginning on or after January 1, 2009, there shall
18 be allowed as a credit against the “tax,” as defined in Section
19 23036, three thousand dollars (\$3,000) for each net increase in
20 qualified full-time employees, as specified in subdivision (c), hired
21 during the taxable year by a qualified employer.

22 (2) (A) For each taxable year beginning on or after January
23 1, 2011, there shall be allowed as a credit against the “tax,” as
24 defined in Section 23036, five thousand dollars (\$5,000) for each
25 net increase in qualified full-time employees, as specified in
26 subdivision (c), hired during the taxable year by a qualified
27 employer.

28 (B) For purposes of this paragraph, a “qualified full-time
29 employee” means an individual who meets the criteria of
30 paragraph (2) of subdivision (b) and who is an ex-offender who
31 was convicted of a felony. A “qualified full-time employee” shall
32 not include a sex offender pursuant to Section 290 of the Penal
33 Code, or the equivalent in another state or territory, under military
34 law, or under federal law, or a person convicted of a serious or
35 violent felony, as defined in subdivision (c) of Section 667.5 and
36 subdivision (c) of Section 1192.7 of the Penal Code.

37 (b) For purposes of this section:

38 (1) “Acquired” includes any gift, inheritance, transfer incident
39 to divorce, or any other transfer, whether or not for consideration.

40 (2) “Qualified full-time employee” means:

1 (A) A qualified employee who was paid qualified wages during
2 the taxable year by the qualified employer for services of not less
3 than an average of 35 hours per week.

4 (B) A qualified employee who was a salaried employee and
5 was paid compensation during the taxable year for full-time
6 employment, within the meaning of Section 515 of the Labor Code,
7 by the qualified employer.

8 (3) A “qualified employee” shall not include any of the
9 following:

10 (A) An employee certified as a qualified employee in an
11 enterprise zone designated in accordance with Chapter 12.8
12 (commencing with Section 7070) of Division 7 of Title 1 of the
13 Government Code.

14 (B) An employee certified as a qualified disadvantaged
15 individual in a manufacturing enhancement area designated in
16 accordance with Section 7073.8 of the Government Code.

17 (C) An employee certified as a qualified employee in a targeted
18 tax area designated in accordance with Section 7097 of the
19 Government Code.

20 (D) An employee certified as a qualified disadvantaged
21 individual or a qualified displaced employee in a local agency
22 military base recovery area (LAMBRA) designated in accordance
23 with Chapter 12.97 (commencing with Section 7105) of Division
24 7 of Title 1 of the Government Code.

25 (E) An employee whose wages are included in calculating any
26 other credit allowed under this part.

27 (4) ~~“Qualified—~~(A) *For taxable years beginning on or after*
28 *January 1, 2009, and before January 1, 2011, “qualified employer”*
29 *means a taxpayer that, as of the last day of the preceding taxable*
30 *year, employed a total of 20 or fewer employees.*

31 *(B) For taxable years beginning on or after January 1, 2011,*
32 *“qualified employer” means a taxpayer that, as of the last day of*
33 *the preceding taxable year, employed a total of 30 or fewer*
34 *employees.*

35 (5) “Qualified wages” means wages subject to Division 6
36 (commencing with Section 13000) of the Unemployment Insurance
37 Code.

38 (6) “Annual full-time equivalent” means either of the following:

39 (A) In the case of a full-time employee paid hourly qualified
40 wages, “annual full-time equivalent” means the total number of

1 hours worked for the taxpayer by the employee (not to exceed
2 2,000 hours per employee) divided by 2,000.

3 (B) In the case of a salaried full-time employee, “annual
4 full-time equivalent” means the total number of weeks worked for
5 the taxpayer by the employee divided by 52.

6 (c) The net increase in qualified full-time employees of a
7 qualified employer shall be determined as provided by this
8 subdivision:

9 (1) (A) The net increase in qualified full-time employees shall
10 be determined on an annual full-time equivalent basis by
11 subtracting from the amount determined in subparagraph (C) the
12 amount determined in subparagraph (B).

13 (B) The total number of qualified full-time employees employed
14 in the preceding taxable year by the taxpayer and by any trade or
15 business acquired by the taxpayer during the ~~current~~ *preceding*
16 taxable year.

17 (C) The total number of full-time employees employed in the
18 current taxable year by the taxpayer and by any trade or business
19 acquired during the current taxable year.

20 (2) For taxpayers who first commence doing business in this
21 state during the taxable year, the number of full-time employees
22 for the immediately preceding prior taxable year shall be zero.

23 (d) In the case where the credit allowed by this section exceeds
24 the “tax,” the excess may be carried over to reduce the “tax” in
25 the following year, and *the* succeeding seven years if necessary,
26 until the credit is exhausted.

27 (e) Any deduction otherwise allowed under this part for qualified
28 wages shall not be reduced by the amount of the credit allowed
29 under this section.

30 (f) For purposes of this section:

31 (1) All employees of the trades or businesses that are treated as
32 related under either Section 267, 318, or 707 of the Internal
33 Revenue Code shall be treated as employed by a single taxpayer.

34 (2) In determining whether the taxpayer has first commenced
35 doing business in this state during the taxable year, the provisions
36 of subdivision (f) of Section 17276, without application of
37 paragraph (7) of that subdivision, shall apply.

38 (g) (1) (A) Credit under this section and Section 17053.80 shall
39 be allowed only for credits claimed on timely filed original returns

1 received by the Franchise Tax Board on or before the cut-off date
2 established by the Franchise Tax Board.

3 (B) For purposes of this paragraph, the cut-off date shall be the
4 last day of the calendar quarter within which the Franchise Tax
5 Board estimates it will have received timely filed original returns
6 claiming credits under this section and Section 17053.80 that
7 cumulatively total four hundred million dollars (\$400,000,000)
8 for all taxable years.

9 (2) The date a return is received shall be determined by the
10 Franchise Tax Board.

11 (3) (A) The determinations of the Franchise Tax Board with
12 respect to the cut-off date, the date a return is received, and whether
13 a return has been timely filed for purposes of this subdivision may
14 not be reviewed in any administrative or judicial proceeding.

15 (B) Any disallowance of a credit claimed due to a determination
16 under this subdivision, including the application of the limitation
17 specified in paragraph (1), shall be treated as a mathematical error
18 appearing on the return. Any amount of tax resulting from such
19 disallowance may be assessed by the Franchise Tax Board in the
20 same manner as provided by Section 19051.

21 (4) The Franchise Tax Board shall periodically provide notice
22 on its Web site with respect to the amount of credit under this
23 section and Section 17053.80 claimed on timely filed original
24 returns received by the Franchise Tax Board.

25 (h) (1) The Franchise Tax Board may prescribe rules,
26 guidelines, or procedures necessary or appropriate to carry out the
27 purposes of this section, including any guidelines regarding the
28 limitation on total credits allowable under this section and Section
29 17053.80 and guidelines necessary to avoid the application of
30 paragraph (2) of subdivision (f) through split-ups, shell
31 corporations, partnerships, tiered ownership structures, or
32 otherwise.

33 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
34 Division 3 of Title 2 of the Government Code does not apply to
35 any standard, criterion, procedure, determination, rule, notice, or
36 guideline established or issued by the Franchise Tax Board
37 pursuant to this section.

38 (i) This section shall remain in effect only until December 1 of
39 the calendar year after the year of the cut-off date, and as of that
40 December 1 is repealed.

1 *SEC. 5. This act provides for a tax levy within the meaning of*
2 *Article IV of the Constitution and shall go into immediate effect.*

3 ~~SECTION 1. This act shall be known and may be cited as the~~
4 ~~Reentry Employment Business Tax Credit Act.~~

5 ~~SEC. 2. Section 17053.76 is added to the Revenue and Taxation~~
6 ~~Code, to read:~~

7 ~~17053.76. (a) (1) For each taxable year beginning on or after~~
8 ~~January 1, 2011, and before January 1, 2016, there shall be allowed~~
9 ~~as a credit against the “net tax,” as defined in Section 17039, an~~
10 ~~amount as specified in paragraph (2), per each qualified employee~~
11 ~~employed by the taxpayer during the taxable year.~~

12 ~~(2) (A) Twenty percent of the gross wages for each qualified~~
13 ~~employee employed by the taxpayer, not to exceed five thousand~~
14 ~~dollars (\$5,000), for the first year of employment for each qualified~~
15 ~~employee.~~

16 ~~(B) Twenty percent of the gross wages for each qualified~~
17 ~~employee employed by the taxpayer, not to exceed five thousand~~
18 ~~dollars (\$5,000), for the second year of employment for each~~
19 ~~qualified employee.~~

20 ~~(b) The credit under subdivision (a) shall be allowed only with~~
21 ~~respect to the first year of employment if the qualified employee~~
22 ~~is employed by the taxpayer for 12 consecutive months from the~~
23 ~~date of employment and only with respect to the second year of~~
24 ~~employment if the qualified employee is employed by the taxpayer~~
25 ~~for 24 consecutive months from the date of employment.~~

26 ~~(c) For purposes of this section, “qualified employee” means~~
27 ~~an individual who is an ex-offender who was convicted of a felony~~
28 ~~and is employed by the taxpayer in a part-time or full-time position.~~
29 ~~“Qualified employee” shall not include an ex-offender who is~~
30 ~~required to register as a sex offender pursuant to Section 290 of~~
31 ~~the Penal Code, or the equivalent in another state or territory, under~~
32 ~~military law, or under federal law, or was convicted of a serious~~
33 ~~or violent felony, as defined in subdivision (c) of Section 667.5~~
34 ~~and subdivision (e) of Section 1192.7 of the Penal Code.~~

35 ~~(d) Any deduction or credit otherwise allowed under this part~~
36 ~~for the wages paid or incurred by the taxpayer upon which the~~
37 ~~credit is based shall be reduced by the amount of the credit.~~

38 ~~(e) If the credit allowed by this section exceeds the “net tax,”~~
39 ~~the excess may be carried over to reduce the “net tax” in the~~
40 ~~following year, and succeeding years if necessary, until the credit~~

1 is exhausted, not to exceed a maximum carryover period of eight
2 years.

3 (f) This section shall only apply to qualified employees hired
4 in a taxable year beginning on or after January 1, 2011.

5 (g) This section shall remain in effect only until December 1,
6 2016, and as of that date is repealed.

7 SEC. 3.—Section 23622.9 is added to the Revenue and Taxation
8 Code, to read:

9 23622.9. (a) (1) For each taxable year beginning on or after
10 January 1, 2011, and before January 1, 2016, there shall be allowed
11 as a credit against the “tax,” as defined in Section 23036, an amount
12 as specified in paragraph (2), per each qualified employee
13 employed by the taxpayer during the taxable year.

14 (2) (A) Twenty percent of the gross wages for each qualified
15 employee employed by the taxpayer, not to exceed five thousand
16 dollars (\$5,000), for the first year of employment for each qualified
17 employee.

18 (B) Twenty percent of the gross wages for each qualified
19 employee employed by the taxpayer, not to exceed five thousand
20 dollars (\$5,000), for the second year of employment for each
21 qualified employee.

22 (b) The credit under subdivision (a) shall be allowed only with
23 respect to the first year of employment if the qualified employee
24 is employed by the taxpayer for 12 consecutive months from the
25 date of employment and only with respect to the second year of
26 employment if the qualified employee is employed by the taxpayer
27 for 24 consecutive months from the date of employment.

28 (c) For purposes of this section, “qualified employee” means
29 an individual who is an ex-offender who was convicted of a felony
30 and is employed by the taxpayer in a part-time or full-time position.
31 “Qualified employee” shall not include an ex-offender who is
32 required to register as a sex offender pursuant to Section 290 of
33 the Penal Code, or the equivalent in another state or territory, under
34 military law, or under federal law, or was convicted of a serious
35 or violent felony, as defined in subdivision (c) of Section 667.5
36 and subdivision (e) of Section 1192.7 of the Penal Code.

37 (d) Any deduction or credit otherwise allowed under this part
38 for the wages paid or incurred by the taxpayer upon which the
39 credit is based shall be reduced by the amount of the credit.

- 1 ~~(e) If the credit allowed by this section exceeds the “tax,” the~~
2 ~~excess may be carried over to reduce the “tax” in the following~~
3 ~~year, and succeeding years if necessary, until the credit is~~
4 ~~exhausted, not to exceed a maximum carryover period of eight~~
5 ~~years.~~
6 ~~(f) This section shall only apply to qualified employees hired~~
7 ~~in a taxable year beginning on or after January 1, 2011.~~
8 ~~(g) This section shall remain in effect only until December 1,~~
9 ~~2016, and as of that date is repealed.~~
10 SEC. 4. This act provides for a tax levy within the meaning of
11 Article IV of the Constitution and shall go into immediate effect.